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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GAMALIEL BAHENA SALGADO,

Defendant and Appellant.

E065023

(Super.Ct.No. RIF1410023)

OPINION

APPEAL from the Superior Court of Riverside County. Thomas E. Kelley, Judge.
(Retired judge of the Santa Cruz Super. Ct. assigned by the Chief Justice pursuant to
art. VI, § 6 of the Cal. Const.) Affirmed.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION¹

A jury convicted defendant Gamaliel Bahena Salgado of 12 offenses involving his stepdaughter: sexual intercourse with a child 10 years or younger, in violation of section 288.7, subdivision (a) (counts 1, 2); sexual penetration of a child 10 years or younger, in violation of section 288.7, subdivision (b) (counts 3, 4, 5, 6); aggravated sexual assault of a child, in violation of section 269, subdivision (a)(1) (counts 7, 8); and aggravated sexual assault of a child, in violation of section 269, subdivision (a)(5) (counts 9-12).

The court imposed a sentence of 110 years to life, based on consecutive terms of 25 years to life on counts 1 and 2, and 15 years to life on counts 3 through 6; the terms on the remaining counts were stayed.² Based on our independent review, we affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

On April 20, 2015, the court denied defendant's request for substitute counsel after a *Marsden* hearing. On November 3, 2015, the court denied defense counsel's motion to exclude evidence of a pretextual recorded call. The court also denied defense counsel's

¹ All statutory references are to the Penal Code unless stated otherwise.

² The court also imposed various fines and fees and calculated 565 days of presentence credit under section 2933.1, based on 492 actual days and 73 days of conduct credit.

motions to exclude evidence of a prior conviction and to admit evidence that the victim had been previously molested.

Prosecution Evidence

Defendant was born in 1964. In 2014, defendant lived with his wife, their three young children, and his wife's older daughter, Jane Doe. Doe, who was born in 2004, did not live with defendant until 2012, when she moved from Guatemala to the United States.

Doe called defendant "Pedro" and regarded him as a father. She willingly performed chores like cleaning and washing dishes. In 2014, when Doe was 10 years old, defendant began inserting his middle finger inside Doe's vagina at nighttime in her bedroom, when Doe's mother was showering. This happened more than 40 times. Doe was too scared to tell defendant to stop or to push him away. She was afraid that he would take her siblings to Mexico.

On more than 10 occasions, defendant penetrated Doe's vagina with his penis. While Doe pretended she was asleep, defendant would pull her pants down. Although Doe locked her bedroom door, defendant would enter after opening the door with a knife. In one incident, defendant tied Doe's hands behind her back with his shirt before molesting her.

In July 2014, Doe reported the abuse to her mother who did not believe her and told her not to tell anyone. Doe's mother sent Doe to live with her aunt. When Doe's mother confronted defendant, he responded, "Believe your daughter." Doe's mother did not call the police because she was afraid of losing her other children.

Doe reported the abuse to her aunt who contacted authorities the same day. In a recorded pretext call between the aunt and defendant, he denied having raped or penetrated Doe. Defendant admitted to one incident in which he tried, but was unable, to have intercourse with Doe. He admitted manually touching Doe but insisted that there was no penetration.

After the phone call, defendant told his wife he was going to Mexico. Defendant was arrested before he could leave. The arresting officer found a passport and keys on defendant's person and a bag of men's clothing and toiletries in the car.

Doe told authorities that defendant put his penis in her vagina about five times and that she would pretend to be asleep because she was afraid or because she didn't want him to know. She explained that in the most recent incident, she was awake and he did not stop at her request. In an RCAT interview, Doe reported that defendant had raped her five times and touched her with his finger about 20 to 30 times. Defendant sometimes covered Doe's eyes with a shirt and also tied her hands. He told her that the police would not catch him because he had an alias.

The parties stipulated that defendant was convicted in 2002 of felony sexual battery and misdemeanor annoying a child. The conduct occurred in 1995 and 1996 against his daughter who was seven or eight years old.

III

DISCUSSION

Appellate counsel has filed a brief summarizing the proceedings and facts and raising no specific issues. The appellate court conducts a review of the entire record to

determine whether the record reveals any issues which would, if resolved favorably to the defendant, result in reversal or modification of the judgment. (*People v. Wende* (1979) 25 Cal.3d 436, 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders v. California* (1967) 386 U.S. 738, 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

We have independently reviewed the record and conclude there was no prejudicial error in admitting evidence of defendant's commission of a prior sexual offense, as permitted under Evidence Code sections 352 and 108, and no prejudicial error by excluding evidence that the victim had been previously molested. Any earlier molestation was only "relevant to the child's ability to describe sexual acts such as those for which the current defendant was being prosecuted." (*People v. Tidwell* (2008) 163 Cal.App.4th 1447, 1455, citing *People v. Daggett* (1990) 225 Cal.App.3d 751, 757-758.) The latter was not an issue in this case.

IV

DISPOSITION

We affirm the judgment.

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CODRINGTON

J.

We concur:

RAMIREZ

P. J.

MILLER

J.